

REMARKS

Claims 86-104 have been canceled without prejudice or disclaimer. Claims 105-135 have been added and therefore are pending in the present application. Claims 105-135 are supported by claims 86-104 are drawn to the elected subject matter.

The specification has been amended to update the cross-reference to related applications.

It is respectfully submitted that the present amendment presents no new issues or new matter and places this case in condition for allowance. Reconsideration of the application in view of the above amendments and the following remarks is requested.

I. The Objection to the Claims

The Office objected to claims 86-87 because they recite non-elected subject matter. Claims 86-104 have been rewritten as claims 105-135 to recite only elected subject matter. Applicants reserve the right to file a continuation application on the non-elected subject matter.

For the foregoing reasons, Applicants submit that the claims overcome this objection. Applicants respectfully request reconsideration and withdrawal of the objection.

II. The Rejection of Claims 91, 95, and 99-101 under 35 U.S.C. 112

Claims 91, 95, and 99-101 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Office stated that "[i]t is not clear as to the public availability of microbial strain or catalog reference for CBS 116.46, [ATCC] 74338; NRRL B-21527; CBS 100231 & CBS 100232." This is the same rejection as in the parent application.

Applicants enclose sheets from the American Type Culture Collection (ATCC) and Centraalbureau Voor Schimmelcultures (CBS) catalogues showing that the strains: *Aspergillus terreus* CBS 116.46, *Talaromyces thermophilus* ATCC 20186 and ATCC 74338, *Myceliophthora thermophila* ATCC 74340, and *Aspergillus* ATCC 34625, are known and readily available.

Applicants also enclose a Statement under 37 C.F.R. 1.808 providing the required assurances for the strains: *T. pubescens* CBS 100232, *P. involutus* CBS 100231, and *T. lanuginosus* NRRL B-21527.

For the foregoing reasons, Applicants submit that the claims overcome this rejection under 35 U.S.C. 112. Applicants respectfully request reconsideration and withdrawal of the rejection.

III. The Rejection of Claim 87 under 35 U.S.C. 102 and the Doctrine of Obviousness-Type Double Patenting

Claim 87 rejected under 35 U.S.C. 102(e) as being anticipated by and under the doctrine of obviousness-type double patenting over claims 1-3 of Lassen et al. (U.S. Patent No. 6,060,298). These rejections are respectfully traversed.

Lassen et al. disclose a wild-type *Peniophora* phytase having an amino acid sequence SEQ ID NO: 7 set forth in the present application.

However, Lassen et al. do not disclose or suggest methods of producing a modified phytase, comprising introducing a mutation at one or more positions 71; 72; 73; 74; 75; 76; 77; 78; 81; 82; 84; 116; 117; 119; and 120, as claimed herein.

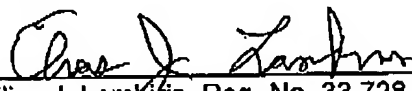
For the foregoing reasons, Applicants submit that the claims overcome these rejections under 35 U.S.C. 102 and the doctrine of obviousness-type double patenting. Applicants respectfully request reconsideration and withdrawal of the rejections.

IV. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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